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No. 519

In the Supreme Court of the United States

OCTOBER TERM, 1930

AMERICAN GLUE COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE UNITED STATES

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 519

AMERICAN GLUE COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE UNITED STATES

The United States does not oppose the petition in this case, but calls attention to the fact that there has been no hearing in the Circuit Court of Appeals.

The question presented is whether Section 611 of the Revenue Act of 1928, c. 852, 45 Stat. 791, 875, should be construed to deprive the petitioner of the right which it otherwise would have had to recover taxes and interest thereon which had been collected after the statutory period of limitations had expired.

This question is the same as that involved in *Graham and Foster, Co-partners, etc.*, v. *Goodcell, Collector*, No. 36, October Term, 1930, certiorari

granted, March 3, 1930; *Magee* v. *United States,* No. 65, October Term, 1930, certiorari granted, May 19, 1930; *Oak Worsted Mills* v. *United States,* No. 104, October Term, 1930, certiorari granted, June 2, 1930; *Taft Woolen Company* v. *United States,* No. 105, October Term, 1930, certiorari granted, June 2, 1930; *Second National Bank of Saginaw* v. *United States,* No. 323, October Term, 1930, certiorari granted October 20, 1930; *Boston Pressed Metal Co.* v. *United States,* No. 337, October Term, 1930, certiorari granted October 20, 1930; and *Daniel Reeves, Inc.,* v. *Anderson, Collector,* No. 463, October Term, 1930, certiorari granted October 20, 1930. The facts are substantially the same in the instant case as in those cases. In addition, it appears that the amount sought to be recovered was collected by *distraint* and not as a result of direct payment by the taxpayer, and, further, that a portion of the amount collected represented interest which was not assessed prior to June 2, 1924. Petitioner urges that these facts furnish it grounds for recovery in addition to those relied upon by the taxpayers in the other cases mentioned above.

The pertinent dates in the instant case are as follows (R. 5–7):

May 1, 1918, return for 1917 filed.

September, 1920, assessment of additional tax.

November 15, 1920, claim in abatement filed.

May 1, 1923, expiration of five-year period for assessment and collection of tax.

August 18, 1924, claim in abatement rejected.

November 24, 1925, additional tax and interest collected.

December 31, 1925, claim for refund filed.

October 16, 1926, claim for refund rejected.

January 15, 1929, suit commenced.

The District Court for the District of Massachusetts held that Section 611 of the Revenue Act of 1918 barred recovery. (R. 33.) Appeal to the United States Circuit Court of Appeals for the First Circuit was allowed September 15, 1930. (R. 33.) The cause has not been heard or submitted in the Circuit Court of Appeals. Certiorari is sought by the petitioner under the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. Cf. *Hicks* v. *Mercantile Trust Co.*, 269 U. S. 283; *Royal Insurance Co.* v. *Fleet Corporation*, 280 U. S. 320, 325.

Since the same major question is already before this Court in several cases, the United States does not oppose the granting of the writ of certiorari.

Respectfully submitted.

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NOVEMBER, 1930.

U. S. GOVERNMENT PRINTING OFFICE: 1930

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Office Supreme Court, U. S.
FILED
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CHARLES ELMORE CROPLEY
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In the

Supreme Court of the United States.

October Term, 1930.

No. 519.

American Glue Company,
Petitioner,

v.

United States of America,
Respondent.

STIPULATION AS TO CHANGE OF CORPORATE NAME.

HARRIS H. GILMAN,
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THOMAS D. THATCHER,
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Attorney for Respondent.

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In the

Supreme Court of the United States.

OCTOBER TERM, 1930.

No. 519.

AMERICAN GLUE COMPANY,
PETITIONER,
v.
UNITED STATES OF AMERICA,
RESPONDENT.

STIPULATION AS TO CHANGE OF CORPORATE NAME.

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that since the filing in this Court of the petition for certiorari in the above entitled case, the corporate name of the petitioner has been changed from AMERICAN GLUE COMPANY to EASTERN EQUITIES CORPORATION; that said change of corporate name was effected by an amendment to the Agreement of Association of said petitioner corporation, in accordance with the laws of the Commonwealth of Massachusetts; that said change of corporate name has not changed or affected the corporate identity of the petitioner; and that henceforth in these proceedings the petitioner shall be designated as EASTERN EQUITIES CORPORATION, to which shall be added the explanatory legend "formerly American Glue Company," or "formerly bearing the corporate name American Glue Company."

HARRIS H. GILMAN,
Attorney for Petitioner.
THOMAS D. THATCHER,
SOLICITOR GENERAL,
Attorney for Respondent.